

AN ACT

RELATING TO TAXATION; CREATING A TAX CREDIT THAT CAN BE TAKEN PURSUANT TO THE INCOME TAX ACT OR THE CORPORATE INCOME AND FRANCHISE TAX ACT FOR THE COSTS OF TRANSPORTING DAIRY OR FEEDLOT WASTE TO A FACILITY FOR USE IN GENERATING ELECTRICITY OR MAKING BIOCRUDE OR OTHER LIQUID OR GASEOUS FUEL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is enacted to read:

"AGRICULTURAL BIOMASS INCOME TAX CREDIT.--

A. A taxpayer who owns a dairy or feedlot and who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2011 and ending prior to January 1, 2020 may apply for, and the department may allow, a tax credit equal to five dollars (\$5.00) per wet ton of agricultural biomass transported from the taxpayer's dairy or feedlot to a facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use. The tax credit created in this section may be referred to as the "agricultural biomass income tax credit".

B. If the requirements of this section have been complied with, the department shall issue to the taxpayer a document granting an agricultural biomass income tax credit.

The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the taxpayer with that taxpayer's income tax return or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

C. Any portion of the agricultural biomass income tax credit that remains unused in a taxable year may be carried forward for a maximum of four consecutive taxable years following the taxable year in which the credit originates until fully expended.

D. A taxpayer who otherwise qualifies and claims an agricultural biomass income tax credit with respect to a dairy or feedlot owned by a partnership or other business association of which the taxpayer is a member may claim the credit only in proportion to that taxpayer's interest in the partnership or business association. The total agricultural biomass income tax credits claimed in the aggregate with respect to the same dairy or feedlot by all members of the partnership or business association shall not exceed the amount of the credit that could have been claimed by a single owner of the dairy or feedlot.

E. A husband and wife who file separate returns

for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

F. Prior to July 1, 2011, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of transportation of agricultural biomass to a qualified facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use for purposes of obtaining an agricultural biomass income tax credit. The rules may be modified as determined necessary by the energy, minerals and natural resources department to determine accurate recording of the quantity of agricultural biomass transported and used for the purpose allowable in this section.

G. A taxpayer who claims an agricultural biomass income tax credit shall not also claim an agricultural biomass corporate income tax credit for transportation of the same agricultural biomass on which the claim for that agricultural biomass income tax credit is based.

H. The department shall limit the annual combined total of all agricultural biomass income tax credits and all agricultural biomass corporate income tax credits allowed to a maximum of five million dollars (\$5,000,000). Applications for the credit shall be considered in the order received by

the department.

I. As used in this section:

(1) "agricultural biomass" means wet manure meeting specifications established by the energy, minerals and natural resources department from either a dairy or feedlot commercial operation;

(2) "biocrude" means a nonfossil form of energy that can be transported and refined using existing petroleum refining facilities and that is made from biologically derived feedstocks and other agricultural biomass;

(3) "feedlot" means an operation that fattens livestock for market; and

(4) "dairy" means a facility that raises livestock for milk production."

Section 2. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"AGRICULTURAL BIOMASS CORPORATE INCOME TAX CREDIT.--

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2011 and ending prior to January 1, 2020 for a dairy or feedlot owned by the taxpayer may claim against the taxpayer's corporate income and franchise tax liability, and the department may allow, a tax credit equal to five dollars (\$5.00) per wet ton of agricultural biomass transported from

the taxpayer's dairy or feedlot to a facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use. The credit provided in this section may be referred to as the "agricultural biomass corporate income tax credit".

B. If the requirements of this section have been complied with, the department shall issue to the taxpayer a document granting an agricultural biomass corporate income tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the taxpayer with that taxpayer's corporate income tax return or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

C. A portion of the agricultural biomass corporate income tax credit that remains unused in a taxable year may be carried forward for a maximum of four consecutive taxable years following the taxable year in which the credit originates until the credit is fully expended.

D. Prior to July 1, 2011, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of transportation of agricultural biomass to a qualified facility that uses

agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use for purposes of obtaining an agricultural biomass corporate income tax credit. The rules may be modified as determined necessary by the energy, minerals and natural resources department to determine accurate recording of the quantity of agricultural biomass transported and used for the purpose allowable in this section.

E. A taxpayer that claims an agricultural biomass corporate income tax credit shall not also claim an agricultural biomass income tax credit for transportation of the same agricultural biomass on which the claim for that agricultural biomass income tax credit is based.

F. The department shall limit the annual combined total of all agricultural biomass income tax credits and all agricultural biomass corporate income tax credits allowed to a maximum of five million dollars (\$5,000,000). Applications for the credit shall be considered in the order received by the department.

G. As used in this section:

(1) "agricultural biomass" means wet manure meeting specifications established by the energy, minerals and natural resources department from either a dairy or feedlot commercial operation;

(2) "biocrude" means a nonfossil form of

energy that can be transported and refined using existing petroleum refining facilities and that is made from biologically derived feedstocks and other agricultural biomass;

(3) "feedlot" means an operation that fattens livestock for market; and

(4) "dairy" means a facility that raises livestock for milk production."

Section 3. APPLICABILITY.--This act is applicable to taxable years beginning on or after January 1, 2011 and ending prior to January 1, 2020.
